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SUPREME COURT, U.S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 520

UNITED GAS PIPE LINE COMPANY,
Petitioner,

v.

TYLER GAS SERVICE COMPANY and CITY OF TYLER, TEXAS,
Respondents.

MOTION OF McMURREY REFINING COMPANY FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Of Counsel:

J. PHILIP BAHN,
Winthrop, Stimson, Putnam & Roberts.

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McMurrey Refining Company (McMurrey), pursuant to Rule 42 of the Revised Rules of the Supreme Court of the United States, respectfully moves for leave to file the brief *amicus curiae* annexed hereto in opposition to the petition of United Gas Pipe Line Company (United) for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit. The interest and reason for participation of McMurrey are as follows:

McMurrey is a corporation organized under the laws of the State of Texas and is engaged in the business of refining crude oil in the City of Tyler, County of Smith, Texas. In the course of its business, McMurrey purchases gas from Respondent Tyler Gas Service Company (Tyler)

pursuant to a contract. The rate fixed by said contract is one cent per MCF above the cost of the said gas to Tyler. Tyler in turn purchases such gas from United under a contract which, as modified, provides for a rate of 7.5¢ per MCF.

Since 1953 United has three times filed schedules with the Federal Power Commission (the Commission) purporting to increase the rates provided for in its contract with Tyler without Tyler's consent. The effect of these increases, if valid, is to increase the cost of gas purchased by McMurrey by over 135%. For example, the cost to McMurrey of the gas purchased by it during the twelve months' period from February 1, 1956 to January 31, 1957 at the contract rate is $134,626.60. At the increased rate the cost is $318,815.44, or an increase of $184,188.84 per year.

The United States Court of Appeals for the District of Columbia Circuit has set aside an order of the Commission holding that United had the legal right to increase the contract rates without Tyler's consent. This is a proceeding to review that Court's judgment. Thus McMurrey is vitally and directly interested in the outcome of this cause and was permitted to file a brief *amicus curiae* and to participate in oral argument in the Court below.

Respectfully submitted,

WILLIAM C. CHANLER,
40 Wall Street,
New York 5, New York,
Counsel for McMurrey Refining Company.

Of Counsel:

J. PHILIP BAHN,
Winthrop, Stimson, Putnam & Roberts.

October 29, 1957.

IN THE

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BRIEF FOR McMURREY REFINING COMPANY, *AMICUS CURIAE*, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The interest of McMurrey Refining Company (McMurrey) in this cause is set forth in McMurrey's motion to which this brief is annexed.

Argument

The sole question raised by the petition for certiorari is whether the United States Court of Appeals for the District of Columbia Circuit erroneously held that a decision of the Court of Appeals for the Fifth Circuit dismissing Respondents' complaint for lack of juris-

sdiction did not constitute *res judicata* as to the merits of Respondents' claims before the Federal Power Commission and therefore does not bar Respondent Tyler Gas Service Company from recovering sums erroneously collected from it in violation of a contract. It is respectfully submitted that such an issue raises no such substantial question of law as to merit review by this Court.

Moreover, it is respectfully submitted that it is so crystal clear from the opinion of the Court below, as well as from Respondents' brief in opposition, that the decision relied on by Petitioner as constituting *res judicata* was not a decision on the merits here that it seems unnecessary to add further argument.

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted,

WILLIAM C. CHANLER,
Counsel for Amicus Curiae.

Of Counsel:

J. PHILIP BAHN,
Winthrop, Stimson, Putnam & Roberts.

October 29, 1957.